

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

**IN RE:**

**LOUIS A. TELERICO**

DEBTOR.

CASE NO. **17-50236-amk**

CHAPTER 11

JUDGE ALAN M. KOSCHIK

**STATE OF OHIO, DEPARTMENT OF  
TAXATION'S RESPONSE TO AMENDED  
MOTION OF LOUIS A. TELERICO  
DEBTOR AND DEBTOR IN POSSESSION  
TO SELL A PARCEL OF REAL ESTATE  
FREE AND CLEAR OF ALL LIENS,  
CLAIMS AND ENCUMBRANCES**

The State of Ohio, Department of Taxation ("ODT") by and through special counsel, hereby objects to Louis A. Telerico's ("Debtor") Amended Motion of Louis A. Telerico Debtor and Debtor in Possession to Sell a Parcel of Real Estate Free and Clear of All Liens, Claims and Encumbrances. (ECF Doc. No. 151). Debtor's motion seeks to sell a parcel of property identified as parcel number 03-016-00-00-173-001, ("Glengarry 130-A"), one of four adjacent parcels of real property at issue in this bankruptcy, at a private sale for \$75,000 and to transfer the proceeds of the sale to real estate taxes, closing costs, real estate broker commission, and Stifel, Nicolas, & Company, Inc. ("Stifel"). ODT hereby objects to the proposed sale for the reasons stated below.

ODT shares the concerns raised in the U.S. Trustee's response as to whether the sale has been proposed in good faith. Debtor proposes to sell Glengarry 130-A to his *wife's son*, a connection not disclosed in the original Motion to Sell, (ECF. Doc. No. 148), and downplayed in the amended motion. An "arm's length" transaction is one "relating to, or involving dealings



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between two parties who are not related or not on close terms and who are presumed to have roughly equal bargaining power; not involving a confidential relationship...” BLACK’S LAW DICTIONARY (10th Ed. 2014). Here, the proposed buyer is related or on such close terms with the Debtor as to keep this transaction from being arm’s length.

Further, Debtor has not had Glengarry 130-A separately appraised. The Debtor offers two appraisals, with only the Portage County Auditor’s appraisal considering Glengarry 130-A alone. The second appraisal offered by the Debtor does not include an appraisal for Glengarry 130-A as a separate parcel. Instead it was performed on a collection of parcels adjacent to the Debtor’s residence that includes Glengarry 130-A. The proposed sale to the Debtor’s step son and the lack of a separate appraisal is further troubling in light of the absence of any evidence that the Debtor attempted to obtain other offers on Glengarry 130-A. *See In re Country Manor of Kenton, Inc.*, 172 B.R. 217, B.R.221 (Bankr.N.D. Ohio 1994). There is no evidence that the property has been adequately marketed or that the property is being sold for fair market value.

In addition, some of the issues related to this motion are directly at issue in the adversary proceeding already filed. These include whether Glengarry 130-A is even property of the bankruptcy estate. Other than to include conclusory mentions in his Motion, Debtor has not cited authority to show that he has the right or authority to sell Glengarry 130-A. Further, the issue whether the three parcels are more valuable combined or marketed separately has been hotly contested in the adversary proceeding and not finally determined.

Finally, ODT agrees with the position of the IRS that Debtor cannot preserve for the benefit of the estate those alleged portions of Stifel’s debt that it has agreed to release. (ECF Doc. No. 161). Under the proposal, Stifel has agreed to reduce the amount of the underlying debt, thereby reducing the amount of the lien that acts only to secure that debt. It has not



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avoided that security interest. Accordingly, the junior lien holders should be entitled to move up in accordance with the priority status of their respective liens.

ODT acknowledges that it has a lower priority lien than some of the other secured creditors in this action. However, the issues raised by the proposed motion to sell and the motion to compromise are troubling. For these reasons, the State of Ohio, Department of Taxation respectfully requests that the Court deny Debtor's motion.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I certify that on September 26, 2018, a true and correct copy of the foregoing was served via the court's Electronic Case Filing System on these entities and individuals who are listed on the court's Electronic Mail Notice List:

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